IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 126 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KISHOR @ PUNJA NATHA

Appearance:

MS B.R.GAJJAR ADDL.PUBLIC PROSECUTOR for Appellant

MR RUCHIR M. SAYANI for Respondent No. 1 and 2

MS MITABEN PANCHAL for Respondent No. 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 24/03/2000

C.A.V. JUDGEMENT

#. This is an appeal under Section 378(1) of the Criminal Procedure Code, 1973 (for short `Cr.P.C.') filed by the State Government against an order of acquittal

passed by the learned J.M.F.C., Junagadh by rendering his judgment (Exh. 210) dated 14-9-1989 in Criminal Case No. 2916 of 1981 which was on his file.

#. The present respondents were the accused before the trial court and therefore for the sake of convenience the parties will be referred to as complainant and accused hereinafter as per their respective references in the said judgment.

#. The facts leading to this present appeal in a nut -shell are as follows:-

As per the complaint Exh. 98 filed by one Shri Govindbhai Kalabhai Parmar, who was Inspector of Post Offices, Porbandar Subdivision, Porbandar, which he lodged on 16-7-1975, he was entrusted with an enquiry with regard to the alleged misappropriation of Rs.4500/in the savings bank branch of Porbandar Head Post Office, at Porbandar.

From his enquiry it revealed that on or about 24-4-1975 one person named Urmilaben Harjivandas Karia, C/o. Harjivan Mulji Karia of village Chhaya got opened one savings bank account No. 1255639 by depositing Rs.5/-. in Porbandar H.O. Post Office. On that very day, two British Postal Orders each of 10 pounds equivalent to an amount of Rs.370.80 were deposited in said savings bank account and therefore as on 24-4-1975 there was a balance of Rs.375.80 at credit in said savings bank account. On 25-4-1975 a withdrawal of Rs.370/- was made and therefore balance of an amount of Rs.5.80 remained at credit in said account.

Thereafter on 9-5-1975, one withdrawal slip with a request to withdraw Rs. 4500/- was submitted to the Post Office. Said amount was to be withdrawn from savings bank account No. 1255639 and that withdrawal slip was purported to have been signed by one Ramniklal Ramji. As against that withdrawal slip, an amount of Rs.4500/- was withdrawn and said amount was debited in the Savings account No. 1255639 of said Post Office.

On making enquiry it was found that there was no savings account in the name of Ramniklal Ramji in said Porbandar Head Post Office and in fact that savings bank account No. 1255639 was in the name of Urmilaben Harjivandas Karia and as on 25-4-1975 an amount of only Rs.05=80ps was at credit in her account. It is also alleged in the complaint that no amount of Rs.4500/- was ever credited in the said savings bank account.

It is the case of the prosecution as it appears from the complaint that no person named Urmilaben Harjivandas Karia is residing at village Chhaya at the address shown as Opp. Chhya Grampanchayat and therefore it is the case of the prosecution that said account was a bogus account which was got opened in the fake name of Urmilaben Harjivandas Karia. As per the case of the prosecution ledger card for said account which was to be filled-in by Ledger Clerk was filled-in by accused No.1 Kishore alias Punja Natha Chauhan. On making enquiry from the said accused No.1, he informed the complainant that one lady had come to get opened that account and that he was not knowing that lady and that he did not fill-in the ledger card for savings account No. 1255639. It is further alleged in the complaint that accused No.1 might have prepared a ledger card in the name of Ramniklal Ramji and he might have placed that ledger card in the record, in place of ledger card which was prepared in the name of Urimilaben Harjivandas Karia. In ledger card prepared in the name of Ramniklal Ramji, number of savings account was shown as No. 1255639. A further doubt is expressed in the complaint that a prescribed From No. SB-3 to get opened a new account in the name of Ramniklal Ramji might have been prepared by accused No.1 by putting a forged signature of Ramniklal Ramji and thereafter on 9-5-1975 by putting a forged signature of Ramniklal Ramji or by producing a person stating his name as Ramniklal Ramji before the counter of savings bank account, an amount of Rs.4500/was withdrawn and thereafter ledger card and index card both prepared in the name of Ramniklal Ramji were taken out from the office-record and replaced them by putting ledger card and index card prepared earlier in the name of Urmilaben Harjivandas Karia.

It is the case of the prosecution that warrant of payment was checked and verified by Deputy Post Master Shri M.B. Hoddar who is examined as P.W. 3 at Exh. 48, Counter Clerk Shri M.H. Balva (accused No.3) and Ledger Clerk Shri H.B. Kapdi who is examined as P.W. 2 at Exh. 69, and thereafter they passed that warrant of payment for Rs.4500/- to the person who tendered that warrant of payment.

It is the case of the prosecution that on 9-5-1975 there were pass book, ledger card and card of specimen signatures, all with respect to Ramniklal Ramji on the record and after checking and verifying the said documents, payment of Rs.4500 was passed and made. It is the case of the prosecution that as on date of lodging

the complaint that ledger card and index card in the name of Ramniklal Ramji were not there in the record and same were missing and doubt is expressed in the complaint that as Shri Kishore alias Punja Natha Chauhan (accused No.1), who is serving as class IV employee in the Post Office is fully conversant with the procedure for getting opened savings bank accounts and procedure for withdrawal of the amount, said cheating with the post office was done by accused No.1.

Lastly it is stated in the complaint that on 9-5-1975 Shri M.B. Hoddar was Deputy Post Master (Savings bank), Shri M.H. Balva was Savings Bank Account Clerk and Shri H.B. Kapdi was Ledger Clerk and Shri P.N.Chahuhan was class IV employee in the Post Office and as stated in the complaint said persons in collusion with each other and by abetting each other, misappropriated an amount of Rs.4500/-.

That aforesaid complaint first came to be registered as C.R.No. I 187 of 1975 and in that complaint the name of accused No.2 was not shown at all. On completion of police investigation, the case was chargesheeted against the present three accused on 23-1-1976 and that charge sheet came to be registered as Criminal Case No. 187 of 1976 in the Court of J.M.F.C. Porbandar. Then that case was transferred to the Court of the Chief Judicial Magistrate at Junagadh and that case came to be registered as Special Criminal Case No. 53 of 1978. Thereafter again that case was retransferred to the Court of the Judicial Magistrate First Class at Porbandar and it was again registered as Criminal Case No. 2916 of 1981.

On perusal of the documents on which prosecution relied, the learned J.M.F.C. had framed charge at Exh. 50 against all the three accused on 4-8-1981. The prosecution led oral as well as documentary evidence in support of the case for which charge has been framed. The prosecution has examined in all ten witnesses and produced a number of documents.

#. The defence of the accused is a case of complete denial. After appreciating the evidence led by the prosecution and after hearing the learned advocates for both the parties, the learned J.M.F.C. came to the conclusion that prosecution has failed to prove the case against all the accused beyond reasonable doubt and therefore by rendering his judgment (Exh. 210) dated 14-9-1989, he has acquitted all the accused by giving them benefit of doubt.

#. Being aggrieved against and dissatisfied with the said judgment of acquittal, the State Government has preferred this present Criminal Appeal.

#. The learned advocates for both the parties have read the entire oral as well as documentary evidence and commented the evidence on which the learned Magistrate relied to come to the conclusion of case being not proved beyond reasonable doubt.

#. I have heard Ms. B.R.Gajjar, ld. APP for the appellant, Mr. Ruchir M. Sayani, learned Advocate for Mr. N.D.Nanavati, learned advocate for the respondents Nos. 1 and 2 and Ms. Mitaben Panchal, learned advocate for the respondent No.3. I have gone through the entire record of the case which was before the trial court.

#. Ld. APP for the appellant has vehemently argued that looking to the evidence of handwriting expert coupled with his written opinion (Exh. 146) and reasons (Exh. 147) learned Magistrate ought to have held that all the three accused have committed offences for which charge (Exh. 50) has been framed. Learned advocates for respondents have argued that looking to an evidence led by the prosecution, the specimen signatures on specimen forms which were taken from the accused are not proved to have been taken from respective accused. As per their arguments, the handwriting expert has based his opinion by comparing the signatures on alleged admitted documents (Mark A, B, C and D) which are exhibited as Exh. 70, 71, 72 and 73. Alleged specimen signatures on specimen forms were taken from accused during the course of investigation. Learned advocate Ms. Mitaben Panchal for respondent No.3 has vehemently argued that the opinion of Hand-writing Expert is based on alleged specimen signatures of accused taken by the Investigation Officer during the investigation, and therefore that opinion cannot be taken into consideration unless and until it is proved beyond reasonable doubt that said specimen signatures were taken from respective accused. To understand this argument some admitted facts are required to be taken into consideration.

#. The Investigating Officer Shri Dilipsinh Ranjitsinh Jhala (Exh. 159) has deposed at paragraph 4 that he had received admitted documents (Exh. 70 to 73) from complainant Shri G.K.Parmar and those documents were in custody of complainant Shri G.K.Parmar. No Panchnama was drawn at the time of seizure of that four documents. As per letter (Exh. 160) dated 1-9-1975, complainant Shri

G.K.Parmar produced the following four documents before the Investigating Officer:

1. Pay-in-slip for Rs.5/0 dated 24-4-1975 in the name of Urmilaben Harjivandas Karia (Exh. 70).
2. Pay-in-slip for Rs.370.80 dated 24-5-1975 (Exh.71).
3. Withdrawal Form dated 25-4-1975 purported to have been signed by Urmilaben Harjivandas Karia, by which an amount of Rs.370/- was withdrawn (Exh. 72).
4. Warrant of payment (withdrawal form) for an amount of Rs.4500/- dated 9-5-1975 purported to have been signed by Ramniklal Ramji (Exh. 73).

As per the case of the prosecution above four documents were available on record of the Post Office when complainant lodged his complaint, but on that day neither a prescribed form for opening savings bank account in the name of Ramniklal Ramji nor the card of specimen signatures of Ramniklal Ramji was there on record.

##. It is interesting to note that the Investigating Officer directed the police investigation on the strength of the documents Exhs. 70 to 73 produced by the complainant, as if that four documents were original documents. From the evidence it appears that the Investigating Officer had taken for granted that documents Exh. 70 to 73 to be original documents and therefore he took specimen signatures with specimen writing from all the three accused. As per Panchnama Exh. 154 specimen signatures of accused No.2 were taken. That specimen signatures with specimen writings are at A/1 to A/6 (Exh. 103 to 108) and B/1 to B/6 (Exh. 109 to 114). Accused No.2 was given prescribed form (Mark A) directing him to fill-in that pay-in-slip and further directed him to sign as Urmilaben Harjivandas Karia. That specimen signatures with specimen writings (Exh. 103 to 108) as alleged by the prosecution were signed by accused No.2 in presence of panch witnesses. Likewise, Investigating Officer directed accused No.2 to fill-in six specimen forms of pay-in-slip of Rs. 370.80 and directed him to sign as Urmilaben Harjivandas Karia. That six forms are at Exh. 109 to 114.

As per the case of the prosecution, Investigating Officer also directed accused No.2 to fill-in the prescribed six specimen forms of warrant of payment of Rs.370/- and directed him to sign as Urmilaben Harjivandas Karia. That forms are at C1 to C6 (Exh. 115

to 120).

##. As per panchnama Exh. 154 accused No.1 Punja Natha was asked to fill-in the specimen prescribed forms of warrant of payment for rs.4500/and he was asked to sign as Ramniklal Ramji. That forms are at D1 to D6 (Exh. 121 to 126).

From the above evidence, it is clear that from the very beginning the Investigating Officer had a doubt that accused No.2 had prepared all the documents in the name of Urmilaben Harjivandas Karia and got opened an account in name of Urmilaben with Head Post Office at Porbandar. It also appears that the Investigating Officer had a doubt that accused No.1 had prepared and signed a withdrawal Form `D' (Exh. 73).

##. It may be noted that the Investigating Officer had forwarded four original documents (Mark A, B, C and D) (Exhs. 70 to 73) along with eighteen specimen-forms which were signed by accused No.2, namely, Exhs. 103 to 120 and six specimen forms filled-in by accused No.1 (Exhs. 121 to 126) to the Handwriting Expert under his covering letter (Exh. 101). On reading letter (Exh. 101) dated 4-9-1975, the Investigating Officer treated the documents (Mark A, B, C and D - Exhs. 70 to 73) as original admitted documents and sought a specific opinion from the handwriting expert on the following four points:

1. Whether the handwriting and signature of the accused on Document Mark `A' (Exh. 70) do tally with the signature and handwriting of the person on Document Mark B (Exh. 71)?

2. Whether the signature of the accused on Document Mark A (Exh. 70) do tally with the signature of the accused on Document Mark C (Exh. 72)?

3. Whether the document Mark A (Exh. 70) and Specimen Forms (Exh. 103 to 126) were written by the writer of document Mark B (Exh. 71)? and

4. Whether document Mark C (Exh. 72) and documents Mark M (Exh. 163) and Mark I were signed by the writer of Mark B (Exh. 71)?

##. From the charge it appears that it is a case of the prosecution that on 24-4-1975 Savings Bank Account was opened in the bogus name of Urmilaben Harjivandas Karia as there was no existence of such person named Urmilaben Harjivandas Karia. As per charge framed at Exh. 50, the

ledger card for such Savings Bank Account was to be filled-in by the Savings Clerk but instead of the Savings Clerk that ledger card was filled-in by accused No.1, and therefore from the very beginning it is the case of the prosecution that that Savings Bank Account in the name of Urmilaben Harjivandas Karia was a bogus account in which transactions were carried out by the accused. Prosecution has produced certain original documents relating to savings bank account which was opened in the name of Urmilaben Harjivandas Karia at Exh. 70 to 73. The pay-in-slip with which an amount of Rs.5/- was tendered in the post office is at Exh. 70. It may be noted that application for getting opened said Savings Bank Account is produced but it is not proved. Exh. 71 is the pay-in-slip with which two postal orders were tendered in the post office for an amount of Rs.370.80ps to be credited in Savings Bank Account. Exh. 72 is a warrant of payment by which person named Urmilaben Harjivandas Karia withdrew an amount of Rs.370/- from that savings bank account and therefore documents Exh. 70, 71 and 72 are relating to the account in the name of Urmilaben Harjivandas Karia. If we read complaint Exh. 98 lodged by Shri Govindbhai Kalabhai Parmar, we find that he had made enquiry at the initial stage and had interrogated Shri P.N. Chauhan, i.e., accused No.1 and during that enquiry accused No.1 informed him that for getting opened that savings bank account one lady had come to the post office.

##. It is the general practice that when someone goes to post office for getting opened a savings bank account, his or her identification is required to be given by a person who is known to the officers working in the Post Office, and therefore a reasonable inference can be drawn under Section 114 illustration (e) of the Indian Evidence Act that while getting opened the savings bank account, the concerned officers must have taken the identification of the person who came to get opened that account. Under the circumstances, it was the duty of the Investigating Officer to make in-depth enquiry about Urmilaben Harjivandas Karia in whose name that account had been opened. Investigating Officer, P.W. 10, Dilipsinh H. Jhala has deposed in his evidence that he had enquired for a person named Urmilaben Harjivandas Karia, but, she was not available. He has not produced any evidence to show as to what attempts were made to search out a female named Urmilaben Harjivandas Karia. Looking to the evidence, the Investigating Officer has not deposed in clear terms that there was no existence of any person named Urmilaben Harjivandas Karia. He has merely deposed that he had enquired about person named Urmilaben

Harjivandas Karia but she was not available. It might have happened that the Investigating Officer had gone to the house of Urmilaben Harjivandas Karia and at the time of his visit Urmilaben Harjivandas Karia might not be present at her residence. Thus, it does not mean that person like Urmilaben Harjivandas Karia was not at all in existence. The prosecution ought to have placed all materials to show that all sincere attempts were made to search out Urmilaben Harjivandas Karia. By mere say of Investigating Officer that she was not available, it cannot be presumed that person named Urmilaben Harjivandas Karia was not at all in existence. Still however looking to an evidence of prosecution no misappropriation of single paisa was taken place in the transactions in Savings Bank Account in the name of Urmilaben Harjivandas Karia. So far as the case of prosecution with regard to opening of Savings Bank Account by depositing Rs.5/-, depositing of two Postal Orders in the said account and withdrawal of an amount of Rs.370/- from that account, no illegality whatsoever had occurred.

##. Looking to evidence of prosecution the case is chargesheeted for an amount of Rs.4500/- only withdrawn from that very Savings Bank Account though there was no sufficient amount at credit in the said account. The prosecution has produced a warrant of payment by which that amount of Rs.4500/- was withdrawn at Exh. 73. If we peruse this warrant of payment Exh. 73 we find that on 9-5-1975, this warrant of payment was presented in the post office. Number of Savings Bank Account in Exh. 73 is stated as 1255639. It was signed by one Ramniklal Ramji. In the counterfoil of that warrant of payment signature of Mr. M.B. Hoddar is also there and below it it is stated that after withdrawal, the balance of Rs.200/- remains at credit in the said account.

##. Here in this case important witness is Mr. M.B. Hoddar. He is examined at Exh. 88. At the relevant point of time Mr. Hoddar was working as Supervisor in savings department of Main post office at Porbandar and accused No.3, M.H. Balva was Accounts Clerk while Shri Kapdi was Supervisor. He has also deposed that accused No.1 was a Peon while accused No.2 Devji Lakha was Stamp Vendor. He has deposed about the procedure to be followed when account holder comes to withdraw an amount from the savings bank account. He has deposed in his evidence at paragraph 2 that if an amount sought to be withdrawn is in excess of Rs.250/- then ledger clerk has to verify the signature of person (who comes to withdraw the amount) which he had put on warrant of payment and

thereafter if he is satisfied that the signature on warrant of payment matches or tallies with the specimen signature kept in post office record then that warrant of payment is to be transmitted to Dy. Post master for order of passing of payment. Thereafter Dy. Post Master will check up the application form, ledger and pass book and thereafter he will put signature in withdrawal form, and after putting a signature by Dy. Post Master, that warrant of payment will go to the cashier who will make the payment according to warrant of payment. He has admitted in cross-examination at paragraph 8 that on 9-5-1975 withdrawal form Exh. 72 along with ledger book and pass book were sent to him. Thereafter, he made a verification and checking of pass book and that pass book was found to be in order in accordance with the rules and at that time there was a balance of around Rs.4500/- at credit in that pass book. He also found that ledger book was also in order and thereafter he put signature on counterfoil of Exh. 73 and passed it for payment, and therefore when a warrant of payment Exh. 73 was tendered to him for passing orders with regard to payment, he had verified and checked the pass book, ledger book etc. That documents are not coming forth on record. Looking to his evidence, it stands to reason that there was a specimen signature of Ramniklal Ramjibhai with the post office and this responsible officer Mr. Hoddar had verified and checked the signature on warrant of payment by tallying/matching specimen signature kept in record of Post Office and when he was satisfied he passed an order of passing of payment and thus looking to an evidence of Mr. Hoddar, the payment vide Exh. 73 was made in accordance with rules but later on he has come out with a case that accused have misappropriated an amount of Rs.4500/- by colluding with each other. Initially, the complaint was lodged against him. In F.I.R., Exh. 98, his name appears as accused No.4. It is interesting to note that the Investigating Officer has not chargesheeted the case against him though his signature clearly appears in counterfoil of Exh. 73. The prosecution thought fit to favour him by citing him as a witness instead of accused. Looking to complaint Exh. 98 when he was cited as an accused his evidence is an evidence of accomplice. Naturally, he would try to save his skin and would throw burden on others.

##. Here, in this case it is an admitted fact that for both the times, firstly when an amount of Rs.370/- was withdrawn, and secondly when an amount of Rs.4500/- were withdrawn concerned officers had found that warrant of payments were found in order in accordance with rules as signatures on warrant of payments were tallying with the

specimen signatures of the account holders and that warrants of payment was passed for withdrawal of Rs. 370/- and Rs.4500/-. The Dy. Post Master Mr. Hoddar had verified the ledger book, pass book and specimen signature of the account holder and after verifying and checking the records, he was satisfied that withdrawal form Exh. 73 was in order and in accordance with the rules and therefore he passed an order of payment. It was the duty of the Investigating Officer to produce all the books of account including the ledger book, pass book and specimen signatures of Ramniklal Ramji which were verified and checked by Mr. Hoddar.

Inspite of the above evidence, the Investigating Officer has adopted a curious procedure to prove the case against the accused. He forwarded the original documents Exh. 70 to 73 to Handwriting Expert treating them as original documents and to compare the writings and signatures on said four documents he had taken the writings and signatures in specimen forms from each accused, separately. As per panchnama Exh. 154, he directed accused No.2 Devji Lakha Kargaria to fill-in the form and sign for withdrawal of an amount of Rs.5/-. This type of form was practically similar to Form A Exh. 70 which was received from the complainant. This type of specimen of forms were prepared six in number, which are at Mark A/1 to A/6 (Exhs. 103 to 108).

As per panchnama (Exh. 154) he directed accused No.2 to fill-in Form which is practically similar to Form B (Exh. 71) against which an amount of Rs.370/- was withdrawn. That type of specimen withdrawal forms six in number were directed to be filled-in in and signed and accordingly accused No.2 filled-in that six specimen Forms which are marked as Mark B/1 to B/6 (Exh. 109 to 114). As per panchnama Exh. 154 the Investigating Officer, also directed accused No.2 to fill-in and sign six specimen forms similar to Form C (Exh. 72) with which two postal orders were deposited in the savings bank account. That specimen forms six in number are there on record at Mark C/1 to C/6, which are at Exh. 115 to 120.

##. As per panchnama Exh. 154 Investigating Officer directed accused No.1 to fill-in and sign Form which is similar to Form D (Exh. 73) against which an amount of Rs.4,500/was withdrawn. Accused No.1, accordingly filled-in and signed six specimen forms which are on record at Mark D-1 to D-6. (Exhs. 120 to 126) and therefore the Investigating Officer forwarded original documents Mark A, B, C and D (Exhs. 70 to 73) along with

specimen writings and signatures of accused NO.2 and accused No.1, viz, Mark A-1 to A/6, B-1 to B-6, Mark C-1 to C-6 and D-1 to D-6 to Handwriting Expert and as stated earlier he sought a definite opinion from the Handwriting Expert on points stated in letter Exh. 101. As stated earlier, he wanted to know whether writing and signature on document Mark A i.e., Exh. 70 do tally with the writing and signature on document Mark B (Exh. 71). On reading the Handwriting Expert's opinion Exh. 146 we find that Handwriting Expert has not opined that writing and signature on document Mark A (Exh. 70) do tally with the writing and signature on document Mark B (Exh. 71).

As per his letter Exh. 101, the Investigating Officer also sought an opinion whether writing and signature on document Mark A (Exh. 70) do tally with the writing and signature on document Mark C (Exh. 72). On this point also, the specific information is not given by the Handwriting Expert. As per letter Exh. 101 an opinion was sought on the point whether document Mark A (Exh. 70) and specimen Forms Mark A-1 to A-6 (Exhs. 103 to 108), Mark B-1 to B-6 (Exhs. 109 to 114) and Mark D-1 to D-6 (Exhs. 121 to 126) were written by the writer of Mark B (Exh. 71). In the opinion Exh. 146, on above question no definite answer is given. Another opinion was sought whether document Mark C (Exh. 72) and documents Mark M and I are signed by the writer of the document Mark B (Exh. 71). On reading Exh. 146 no opinion is given on this last question.

##. It is interesting to note that Handwriting Expert has given opinion as follows:-

"Resultant upon a careful examination of all the documents relating to this case, I am of opinion that :-

1. The disputed writing and signature marked A are written by the writer of specimen writings and signatures marked A1 to A6;
2. The disputed writings and signatures marked B (front and reverse) are written by the writer of specimen writings and signatures marked B1 to B6 (front and reverse)
3. The disputed writings and signature marked C are written by the writer of specimen writings and signatures marked C1 to C6;
4. The disputed writings and signatures marked D (front and reverse) are written by the writer of specimen writings and

signatures marked D1 to D6 (front and reverse)"

As per his opinion, writing and signature on Mark A (Exh. 70) were written by the writer of specimen writing and signatures on Mark A-1 to A-6 (Exh. 103 to 108), meaning thereby, Handwriting Expert wants to say that pay-in-slip Mark A (Exh. 70) was written and signed by accused No.2. As per point No.2 of opinion Exh. 146, Handwriting Expert has opined that writings and signatures on Mark B, i.e., Exh. 71 (on both the sides) were written by the person who has filed in and signed Mark B-1 to B-6 (Exh. 109 to 114), meaning thereby he wants to convey that withdrawal Form B (Exh. 71) against which an amount of Rs. 370/- was withdrawn, was written and signed by accused No.2.

As per point No.3 of Exh. 146, the document Mark C (Exh. 72) with which two British Postal Orders total worth Rs.370.80ps were deposited with pay-in-slip Mark C (Exh. 73) were written and signed by the person who has signed Mark C-1 to C-6 (Exhs. 115 to 120), meaning thereby the person withdrew Rs.370/- by tendering withdrawal form was written and signed by accused No.2. Thus as per opinion of Handwriting Expert documents Mark A, B and C, i.e., Exhs 70 to 72 which are related to transactions in the name of Urimilaben Harjivandas Karia were written and signed by accused No.2. As discussed earlier, there was no misappropriation of any single paisa in account which stood in the name of Urmilaben Harjivandas Karia. This case is lodged only for an amount of Rs.4500/- which was withdrawn by tendering withdrawal Form Mark D (Exh. 73). As stated earlier for Mark D specimen forms similar to Form D were directed to be filled-in and signed by accused No.1. That specimen forms are at Mark D-1 to D-6 (Exhs. 121 to 126).

As per point No.4 of opinion, Exh. 146, the Handwriting Expert has opined that disputed writings and signature on Mark D (on both the sides), i.e. Exh. 73 are written by the writer of specimen writings and signatures Mark D-1 to D-6, meaning thereby he wants to convey that disputed withdrawal slip Exh. 73 was written and signed by accused No.1. The offences have been committed in respect of an amount of Rs.4500/- only and therefore it can be said that the disputed document Mark D (Exh. 73) was, as alleged by the prosecution, written and signed by accused No.1.

##. Ld. APP has put much emphasis on the evidence of Handwriting Expert who has given his opinion Exh. 146

together with his reasons Exh. 147. She has argued that looking to the opinion of Handwriting Expert, bogus account in the name of Urmilaben was got opened by accused No.2 and it was operated for depositing an amount of Rs.370.80ps and also for withdrawal of Rs.370/- by accused No.2. As per her arguments by tendering document Mark D (Exh. 73) accused No.1 has withdrawn Rs.4500/- from the savings bank account and therefore case is proved against all the accused.

##. Ms. Mitaben Panchal, ld. advocate for respondent No.3 has argued that opinion of Handwriting Expert can come into picture only after it is proved that specimen Forms Mark A-1 to A-6, B-1 to B-6 and C-1 to C-6 are proved to have been filled-in and signed by accused No.2 only and so far case against accused No.1 is concerned that opinion will come into picture only after it is proved that specimen Forms Mark D-1 to D-5 (Exhs. 121 to 126) are proved to have been filled-in and signed by accused No.1. None of the accused has admitted for such specimen forms filled-in and signed by him. The prosecution only relies on panchnama Exh. 154 under which aforesaid specimen forms were filled-in and signed by accused No.2 and accused No.1. To prove this panchnama Exh. 154, the prosecution has examined panch witness, Vijaykumar Jatashankar at Exh. 153 but another panch witness Hasmukhlal D. Luhana is not examined. As per the evidence of Vijaykumar Jatashankar on 1-9-1975 he was not called at Porbandar Police Station, but Police had come to barber's shop where he had gone for shaving and at that time no other person except him was present. He has further deposed that he only signed panchnama Exh. 154. This witness was declared as hostile witness. He has not supported the case of prosecution. As per cross-examination by the learned APP before the lower Court, a case was put to him that at night time on 1-9-1975 he was called at Police Station where accused No.1 and accused No.2 were present in police custody. One another case was put to him that in his presence specimen forms were filled-in and signed by accused No.2. Further another case was put that specimen forms (Exh. 121 to 126) were filled-in and signed by accused No.1. All these suggestions were denied by him. Another panch Hasmuklal D. Luhana is not examined by the prosecution. So as per the arguments of Ms. Mitaben Panchal when panchnama exh. 154 is not proved the fact relating to specimen forms having been filled-in and signed by accused No.2 is not proved. Accordingly she has further argued that so far important piece of document Mark D (Exh. 73) is concerned specimen forms and signatures were taken from the accused No.1, but that case is also

not proved and therefore when it is not proved, that specimen forms were filled-in and signed by accused it is of no use to refer the opinion of Handwriting Expert. The plinth of the case that specimen forms were filled-in and signed by accused is not proved then a construction of opinion, made on that plinth cannot be considered and taken into account and therefore the case is not proved against accused Nos.1 and 2. Looking to the Handwriting Expert's opinion, case against accused No.1 is also not proved by the prosecution, in absence of proof of writings and signatures on specimen forms (Mark D1 to D6) i.e. Exh. 1212 to 126).

##. Ms. Mitaben Panchal, learned advocate for respondent No.3 has further argued that in absence of any corroboration from other independent witnesses, bare reliance cannot be placed on mere Handwriting Expert's opinion. Here in this case, the prosecution has tried to get corroboration from evidence of officer and employee of Head Post Office, Porbandar.

##. P.W.1 Govind Kala Parmar is a formal complainant who after making the fact finding enquiry lodged the complaint against the accused on direction being given to him by the superior officer and therefore this witness is a formal witness.

Witness No.2 Hargovind B. Kapdi (Exh. 69) was serving as Ledger Clerk in Savings Accounts Branch of Head Post Office of Porbandar and as per his evidence Shri Hoddar whose name was cited in the complaint was a Supervisor while accused No.3 Madhukar Balva was a Counter Clerk and accused No.1 was a Peon. He has deposed that when a withdrawal form (Exh. 72) for Rs.370 was presented in the post office he was working as a Ledger Clerk and in that Form (Exh. 72) there is an initial of accused No.3. He does not speak anything about the signature of person who wanted to withdraw an amount of Rs.370/-. Exh. 72 appears to have been signed by Urmilaben Harjivandas Karia. He has only stated that particulars except signature in Exh. 72 were filled-in by accused No.3. From this only fact no inference can be drawn that accused No.3 had signed Exh. 72 in the name of Urmilaben Harjivandas Karia. It so happens that if a customer who only knows signing and does not know to fill-in in the form, naturally the employees of Post Office may render help him by filling in the Form but it does not mean that Exh. 72 was forged by accused No.3 and therefore from this witness Mr. Kapdi, no corroboration is available to the opinion of the Handwriting Expert.

##. Witness No.3 Mr. Hoddar was a Dy. Post Master in the Head Post Office at Porbandar during the period from 1970 to 1975. He was shown Exh. 72 a withdrawal form for Rs.370/- and he has deposed that the writings in the body of Exh. 72 (except signature) appear to be of accused No.1. He is not certain that Exh. 72 was filled-in in by accused No.1. He was shown Exh. 73 which is a withdrawal from for Rs.4500/- and on seeing that document he has deposed that he cannot say as to who has signed as Ramniklal Ramji. The main controversial document in this case is Exh. 73 as an amount of Rs.4500/- was complained to have been misappropriated by the accused, as alleged in the complaint. Looking to his evidence he has not specifically deposed in his evidence with certainty that writings in Exh. 70, 71 and 72 appear to be that of accused No.1. He is not certain and therefore no independent corroboration is available from him to substantiate the opinion of Handwriting Expert.

##. Ms. Kathaben Gajjar learned APP for the appellant has cited an authority of Murarilal v. State of M.P. reported in AIR 1980 SC 531. Citing this authority, the learned APP has argued that when the Handwriting Expert has given reasons for giving his opinion with regard to hand writings then there is no necessity of corroboration. In para 11 of this authority, it is observed by Hon'ble Supreme Court as follows:

"We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallized into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are

often flaunted."

As per the above legal position, in proper cases corroboration may be sought. The case on hand is such that the specimen forms together with writings and signatures were as alleged by the complainant filled-in by the accused in presence of panch witnesses. Accused have denied that fact. Panch witness has not supported the case of the prosecution that in his presence said specimen forms were filled-in and signed by the accused. On the basis of such specimen forms the Hand Writing Expert has compared the alleged admitted documents (Exh. 70 to 73) and has come to the conclusion as stated in his opinion Exh. 146. As said earlier, by placing reliance on Handwriting Expert's opinion Exh. 146, it is argued that documents Mark A, B and C i.e. Exh. 70, 71 and 72 which are related to Savings Bank Account in name of Urmilaben Harjivandas Karia were filled-in and signed by accused No.2, whereas document Mark D (Exh. 73) was filled-in and signed by accused No.1 and therefore prosecution relies only on the Handwriting Expert's opinion to prove the case against the accused Nos. 2 and 1, in absence of any other corroborative evidence.

##. In case cited by Ms. Kathaben Gajjar, it is observed by the Hon'ble Supreme Court that where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt the uncorroborated testimony Handwriting Expert may be accepted. But at the same time, the Hon'ble Supreme Court has further observed that there cannot be any inflexible Rule on a matter which in the ultimate analysis is no more than a question of testimonial weight and therefore when this Court finds that the specimen forms which were sent to Handwriting Expert are not proved to have been filled-in and signed by accused, then no reliance can be placed only on evidence of the Handwriting Expert.

##. As against the above cited case Ms. Mitaben Panchal has cited an authority of Magan Beharilal v. State of Punjab reported in AIR 1977 SC 1091. In this case it is held by Hon'ble Supreme court that Expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of Handwriting Expert. It is further observed that it is unsafe to base a conviction solely on expert opinion without substantial corroboration and this type of evidence being opinion evidence is by its very nature weak and infirm and cannot of itself form the basis for a conviction. This cited case has been referred to by the Supreme Court in paragraph 10 of case of Murarilal (supra) which has been

referred to by Ms. Kathaben Gajjar. In paragraph 10 of case of Murarilal (supra) the Honourable Supreme Court has made it clear that there appears to be some mistake in the last sentence of extracted passage which was reproduced from paragraph 7 of case of Magan Beharilal (supra) because the Honourable Supreme Court was unable to find in Fakruddin v. State of Madhya Pradesh any statement with extracted portion of last sentence which reads as as follows:

"This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakruddin v. State of Madhya Pradesh AIR 1967 SC 1326 and it uttered a note of caution pointing out that it would be risky to find a solution solely on the evidence of Handwriting Expert and before acting upon such evidence the Court must always try to see whether it is corroborated by other evidence direct or sufficient"

Therefore, on the point of necessity of corroboration for Handwriting Expert's opinion, the authority cited by Ms. Panchal will now be not applicable to this case in view of the authority of Murarilal (supra) cited by ld. APP.

##. So far as legal position with regard to necessity of corroboration is concerned now in view of case of Murarilal (supra), it is clear that when reasons are given by the Handwriting Expert for his opinion, then corroboration is not necessary. But at the same time, the legal position settled by the Hon'ble Supreme Court in case of Magan Beharilal (supra) is not yet changed and as said in case of Magan Beharilal, the Courts must bear in mind that Expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of Handwriting Expert. As said by Hon'ble Supreme Court in case of Magan Beharilal (supra) an evidence of Handwriting Expert being opinion evidence is by its very nature weak and infirm. Therefore when Panchnama Exh. 154 is not proved the most material and important fact is not proved that Investigating Officer directed accused to fill-in the specimen forms practically similar to Forms A, B, C and D, six in number and sign them in presence of panch witnesses and accordingly accused filled-in and signed the said specimen forms. And therefore Handwriting Expert's opinion which is based on such type of specimen forms cannot be made a base for conviction.

##. Ms. Mitaben Panchal has cited another authority of Allauddin v. Shishirkumar reported in AIR 1989 Gauhati 42 wherein in it is held that in the Evidence Act for proving handwriting the opinion of expert and of persons acquainted with handwriting of the person concerned have been made relevant under Ss. 45 and 47 respectively and both under S. 45 and S. 47 the evidence is an opinion, in the former by scientific comparison and in the latter on the basis of familiarity resulting from the frequent observations and experience. It is held that however, the opinion of handwriting expert is not conclusive and the opinion of Handwriting Expert is fallible or liable to error like any other witness.

##. Ms. Mitaben Panchal, ld. Advocate for respondent No.3 has argued that when panchnama (Exh. 154) is not proved beyond reasonable doubt, benefit of doubt should be given to accused. In reply to this argument Ms. Kathaben Gajjar has cited an authority of State of Haryana v. Bhagirath and others (1999) 5 SCC 96. In this cited case it is explained as to what can be said to be a reasonable doubt. It is held that it is nearly impossible in any criminal trial to prove all the elements with a scientific precision and a criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression "reasonable doubt" is incapable of definition and modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge. There can not be any dispute with regard to this principle laid down by the Hon'ble Supreme Court on the point of reasonable doubt. Here in this case Ms. Panchal has emphatically argued that when panchnama exh. 154 is not proved and when it is not proved that specimen forms were filled-in and signed by accused in presence of panch witnesses, it is of no use to come to the conclusion that case is proved against the accused.

##. On the point of scope of appeal before the Appellate courts, Ms. Kathaben Gajjar has cited two authorities. One is Babu and others v. State of Uttar Pradesh AIR 1983 SC 308. In this cited case it is held by the Hon'ble Supreme Court that in appeal against the acquittal if two views are possible the appellate court should not interfere with the conclusions arrived at by the trial court unless the conclusions are not possible and if the finding reached by the trial Judge cannot be said to be unreasonable the appellate court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on the record

because the trial Judge has the advantage of seeing and hearing the witnesses and initial presumption of innocence in favour of the accused is not weakened by his acquittal.

##. Another authority cited by Ms. Kathaben Gajjar is Kora Ghasi v. State of Orissa AIR 1983 SC 360. In that cited case, the trial court acquitted the accused on the ground that there was no sufficient evidence against him to prove the case beyond reasonable doubt. The State of Orissa filed an appeal against the order of acquittal passed by the Sessions Judge to the High Court and in appeal the finding of the Session Judge was reversed and the accused was convicted by the High Court. When the matter reached to Hon'ble Supreme Court, the Hon'ble Supreme court, on appreciating the evidence held that the evidence against the accused was very slender and the main evidence against the appellant consists of the retracted confession made by the accused before the Magistrate where he admitted to have assaulted the deceased with a lathi as a result of some altercation with the deceased. The Hon'ble Supreme Court observed that this confession has been held to be voluntary both by the High Court and Sessions Court and never the less as the confession was retracted, corroboration was necessary. Ultimately, Hon'ble Supreme Court held that at any rate after going through the judgment of the High Court and court below it cannot be said that the view taken by the Sessions Judge was not reasonably possible in the circumstances of that case to reverse the order of the acquittal, even if it was possible to take a different view and ultimately the Hon'ble Supreme Court set aside the conviction and sentence imposed on the accused by the High Court and the accused was released. In view of the above legal position when trial court has come to a conclusion by assigning plausible reasons and if particular view has been taken by the trial court then in absence of any perversity or misreading of evidence, no another view can be substituted by the High Court.

##. As against above two authorities Ms. Kathaben Gajjar has cited an authority of Banwari Ram and others v. State of U.P. reported in 1998 SCC (Cri) 835 wherein it has been held that the High Court has full power to reappreciate the evidence and arrive at a different conclusion but such type of interference with the order of acquittal is not justified merely because another view was possible. In the cited case it is observed at paragraph 5 as follows:-

"If, however, on the evidence two views are

reasonably possible, one supporting acquittal and the other indicating conviction then the High Court would not be justified in interfering with an order of acquittal merely because it takes the view that it would have taken the other view sitting as a trial court. It would, therefore, be correct to state that the High Court while reversing an order of acquittal must apply its mind to the reasons given by the trial court and find out whether such reasons are at all sustainable or not"

##. She has also cited an authority of Rajendra Mahton v. State of Bihar 1998 SCC (Cri) 1013 in which on the facts and in the circumstances of the case, the Hon'ble Supreme Court held that High Court was justified in reversing the conclusion of the trial court and set aside the order of acquittal. She has also cited one another authority of Sambasivan and others v. State of Kerala 1998 SCC (Cri) 1320. In that cited case, in paragraph 7 the Hon'ble Supreme Court has referred to a case of Ramesh Babulal Doshi v. State of Gujarat 1996 SCC (Cri) 972. Relevant legal position reads as follows:

"There is a plethora of case-law on the subject but we consider it unnecessary to quote any decisions here; suffice it to refer to a recent judgment of this Court in Ramesh Babulal Doshi v. State of Gujarat on which reliance is placed by Mr. Lalit. In that case one of us (Justice Mukherjee) speaking for the Court restated the principles as follows: (SCC p. 229, para 7)

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court

answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial court are sustainable or not."

The above authority of Ramesh Babulal Doshi is explained and limited by the Hon'ble Supreme Court in paragraph 8 as follows:-

"We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal"

Therefore what is laid down in case of Ramesh Babulal Doshi is still good law and it holds the field for guidance of the appellate courts dealing with acquittal appeals.

##. The Investigating Officer has not proved in his evidence that particular specimen signatures Exh. 103 to 120 were given by accused No.2. He was also not shown the specimen signatures Exh. 121 to 126 taken from accused No.1 and therefore he has given a very vague evidence on the point of specimen signatures of accused taken by him. Under the circumstances, when the base is not proved the opinion of Handwriting Expert is also not helpful to the prosecution.

##. In view of the above legal position, it is the duty of the appellant to satisfy this Court that (1) the

entire approach of the trial court in dealing with the evidence was patently illegal or (2) the conclusions arrived at by it were wholly untenable (3) or the findings of the trial court are palpably wrong, manifestly erroneous and demonstrably unsustainable.

The learned APP has not satisfied this Court by commenting the evidence of witnesses that judgment of the trial court is erroneous and wrong. Considering the evidence led by the prosecution the learned Magistrate has come to a possible conclusion based on plausible reasons. This Court does not find any other circumstances to come to a different conclusion. Looking to an evidence led by the prosecution, it is difficult to differ with the view taken by the learned Magistrate because here in this case the base of the case that specimen forms filled-in and signed by accused as directed by the Investigating Officer are not proved beyond reasonable doubt because panch witness has not proved the panchnama exh. 154. The Investigating Officer has deposed in his evidence that on 1-9-1975 he had taken specimen signatures of all the three accused in presence of panch witnesses under Panchnama exh. 154. The learned APP before the trial court did not show the specimen signatures of each accused separately to this Investigating Officer.

Under the circumstances, and in view of the discussion made hereinabove, this Court finds that there is no cogent reason to differ with the views of the learned Magistrate and therefore this appeal deserves to be dismissed and accordingly this appeal is dismissed and the judgment dated 14-9-1989 rendered in Criminal Case No. 2916 of 1981 by the learned Judicial Magistrate, Junagadh is confirmed.

(H.H. Mehta, J)

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